

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>AMELIA URTEAGA</b>	)	
Claimant	)	
VS.	)	
	)	
<b>BEEF PRODUCTS, INC.</b>	)	Docket No. 196,407
Respondent	)	
AND	)	
	)	
<b>CHUBB GROUP OF INSURANCE COMPANIES</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the Award dated December 11, 1997, entered by Administrative Law Judge Kenneth S. Johnson. The Appeals Board heard oral argument on June 24, 1998.

**APPEARANCES**

Thomas R. Fields of Kansas City, Kansas, appeared for the claimant. Kirby A. Vernon of Wichita, Kansas, appeared for the respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. Also, at oral argument to the Appeals Board, claimant's counsel announced that no claim was being made for the hernia that Dr. Zeferino Arroyo treated from June 1994 through November 1995.

**ISSUES**

After finding that claimant failed to serve respondent with timely written claim and failed to prove that she sustained permanent injury for her alleged April 28, 1994, work-related accident, Judge Johnson entered an Award denying all benefits. Claimant requested the Appeals Board to review the following issues:

- (1) Did claimant serve respondent with timely written claim?
- (2) What is the nature and extent of claimant's injury and disability?
- (3) Is claimant entitled to an award for authorized, unauthorized, or future medical benefits?

Those are the only issues before the Board on this appeal.

**FINDINGS OF FACT**

After reviewing the entire record, and in addition to Judge Johnson's findings and conclusions, the Appeals Board finds:

- (1) On April 28, 1994, Ms. Urteaga fell while working for Beef Products, Inc. Beef Products referred her for medical treatment with its company physician, Myron J. Zeller, M.D.
- (2) The last date that Ms. Urteaga obtained authorized medical treatment was May 26, 1994, when Dr. Zeller released her to return to work without restrictions. That finding is based upon Dr. Zeller's testimony. Dr. Zeller was not asked to explain why a short-term disability form dated July 14, 1994, which bears his signature stamp, indicates that he treated Ms. Urteaga on both June 29 and July 7, 1994.
- (3) Ms. Urteaga has failed to prove that her fall resulted in a permanent injury for which she is entitled to receive permanent partial disability benefits. When Dr. Zeller released her from treatment in late May 1994, she was much improved and, as indicated above, released to return to work without restrictions. Board certified orthopedic surgeon Robert A. Rawcliffe, M.D., saw Ms. Urteaga at the request of the Division of Workers Compensation in December 1995. Although Ms. Urteaga initially sustained some injury in the fall, Dr. Rawcliffe could not find any evidence of permanent impairment. The doctor also concluded that Ms. Urteaga was magnifying her symptoms. The Appeals Board finds Dr. Rawcliffe's testimony persuasive.
- (4) Ms. Urteaga has failed to prove that the alleged chronic pain syndrome or myofascial pain that she now experiences is related to the April 1994 accident. After being released by Dr. Zeller, the next doctor that Ms. Urteaga saw was general surgeon

Zeferino J. Arroyo, M.D., when she went to a Garden City hospital emergency room on June 20, 1994. On that date, she complained of abdominal pain, nausea, and vomiting, and told the doctor she had been sick for about four days. Dr. Arroyo diagnosed a strangulated incisional hernia and immediately performed surgery to repair it. The doctor continued to treat Ms. Urteaga through November 20, 1995. While treating with Dr. Arroyo, Ms. Urteaga did not mention any other complaints or symptoms, which the Appeals Board finds significant.

(5) When considering the entire record, the Appeals Board is not convinced that it is more probably true than not that Ms. Urteaga now has either chronic pain syndrome or myofascial pain as the result of the April 1994 fall. The Appeals Board has reviewed the testimony of Ms. Urteaga's expert medical witness, Fernando M. Egea, M.D., but the Board is not persuaded by his opinions.

(6) The record fails to establish that Dr. Zeller referred Ms. Urteaga to Dr. Arroyo for treatment of the hernia. Therefore, the last day of authorized medical treatment with Dr. Zeller or his referrals is May 26, 1994.

(7) The letter dated April 29, 1994, that Ms. Urteaga delivered to her supervisor did not claim workers compensation benefits and under these facts, could not reasonably be construed as a claim for such.

#### **CONCLUSIONS OF LAW**

(1) Ms. Urteaga is not claiming benefits for the hernia that Dr. Arroyo discovered in June 1994. Any inability to engage in substantial and gainful employment resulted from the hernia instead of the April 1994 fall. Therefore, Ms. Urteaga is not entitled to receive temporary total disability benefits in this proceeding. Further, because Ms. Urteaga has failed to prove that the fall caused either permanent injury or permanent impairment, she is not entitled to receive permanent partial disability benefits.

(2) Beef Products, Inc. referred Ms. Urteaga to their company physician, Dr. Zeller, shortly after the April 1994 fall. Therefore, those medical expenses are authorized and the responsibility of Beef Products and its insurance carrier. Because Ms. Urteaga has failed to prove she sustained permanent injury or impairment, the request for future medical benefits must be denied.

(3) Although the timely written claim issue is moot as to Ms. Urteaga's entitlement to additional benefits, the Appeals Board adopts the Judge's conclusion that Ms. Urteaga failed to serve timely written claim upon Beef Products for the April 1994 fall. As Judge Johnson concluded, the first document that would be construed as written claim was Ms. Urteaga's Application for Hearing, which was filed on December 20, 1994, or 208 days after the last authorized medical treatment. Therefore, written claim was not filed within

200 days of the accident or the date of last authorized medical treatment as required by the Workers Compensation Act.<sup>1</sup>

(4) Ms. Urteaga contends that Dr. Zeller referred her to Dr. Arroyo and, therefore, Beef Products had to advise her that the company was not authorizing Dr. Arroyo for treatment before the 200-day period for written claim commenced. The Appeals Board disagrees. As indicated in the findings above, Ms. Urteaga has failed to prove that Dr. Zeller referred her to Dr. Arroyo for authorized medical treatment.

(5) The Appeals Board adopts Judge Johnson's findings and conclusions to the extent they are not inconsistent with the above.

### **AWARD**

**WHEREFORE**, the Appeals Board modifies the Award dated December 11, 1997, entered by Administrative Law Judge Kenneth S. Johnson to grant claimant authorized medical benefits which consist of those expenses incurred with Dr. Zeller or his referrals; the Appeals Board affirms the denial of the other benefits.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Thomas R. Fields, Kansas City, KS  
Kirby A. Vernon, Wichita, KS  
Philip S. Harness, Director

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<sup>1</sup> K.S.A. 44-520a.